

RECEIVED
DOCKET FILE COPY ORIGINAL
SEP - 8 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Regulatory Treatment of LEC) CC Docket No. 96-149
Provisions of Interexchange)
Service Originating in the)
LEC's Local Exchange Area)
)
and)
)
Policy and Rules Concerning)
the Interstate, Interexchange)
Marketplace)

General Communication, Inc.'s Opposition to
Petitions for Reconsideration

Pursuant to Section 1.429 of the Commission's rules, General Communication, Inc. (GCI) hereby opposes the Petitions for Reconsideration of the Second Report and Order¹ adopted on April 18, 1997. In the Report and Order, the Commission required independent local exchange carriers to provide in-region, interstate and international interexchange services through a separate legal entity. The Commission should affirm its findings.

Anchorage Telephone Utility (ATU), National Telephone Cooperative Association (NTCA), GTE, and Alltel argue that independent LECs should not be required to provide in-region, interstate and international, interexchange services through a

¹Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket 96-149, FCC 97-142, April 18, 1997.

separate legal entity. They further state that the Competitive Carrier Fifth Report and Order separations requirements for LEC provision of in-region, interstate and international, interexchange services should sunset in three years. They also argue that the Commission should adopt a streamlined procedure to exempt immediately from these requirements independent LECs facing competition in their local exchange markets. These petitions for reconsideration are merely repeating the issues previously decided by the Commission in the Second Report and Order. The Commission should affirm its findings that independent ILECs must provide in-region, interstate and international, interexchange services through a separate legal entity, continue the Competitive Carrier Fifth Report and Order requirements until the point in time the Commission determines that the rules are no longer necessary and not adopt a streamlined procedure to exempt independent ILECs facing competition from these requirements.

I. Independent LECs Must Follow the Requirements of the Second Report and Order

The Commission correctly determined that "absent appropriate and effective regulation, independent LECs have the ability and incentive to misallocate costs from their in-region, interstate, interexchange services to their monopoly local exchange and exchange access services within their local service region."² The Commission further found that

²Id. at paragraph 159.

an independent LEC, like a BOC, potentially could use its market power in the provision of exchange access service to advantage its interexchange affiliate by discriminating against the affiliate's interexchange competitors with respect to the provision of exchange and exchange access services. This discrimination could take the form of poorer quality interconnection or unnecessary delays in satisfying a competitors' request to connect to the independent LEC's network.³

The protections proposed by the petitioners will not achieve the same goals of the Commission. Independent LECs have the same monopoly control over local exchange bottleneck facilities as any incumbent LEC, including the Bell Operating Companies.

Independent LECs may even have more monopoly power over the local bottleneck because competition will move into independent LEC areas slower than they are moving into BOC territories. ATU is the largest LEC in the State of Alaska. It serves over half the state's population and has significant market power in the state.

ATU states that the cost allocation and affiliate transactions rules would protect ratepayers adequately. This is incorrect. ATU has recently been granted a waiver so that it will not be required to file its Cost Allocation Manual (CAM) or ARMIS reports with the Commission since its annual revenues "barely exceed" the filing and reporting thresholds.⁴ The Commission cannot rely on ATU's bold assertions that they are complying with these rules since relevant information will not be

³Id. at paragraph 160.

⁴Reform of Filing Requirements and Carrier Classifications, CC Docket 96-193, FCC 97-145, adopted May 20, 1997 at paragraph 72.

filed with the Commission.

II. The Requirements Should Not Automatically Sunset in Three Years

ATU argues that the Competitive Carrier requirements for independent LECs should automatically sunset in three years. The Commission should not adopt this policy. The Commission stated in the Second Report and Order that it would

commence a proceeding three years from the date of adoption of this Order to determine whether the emergence of competition in the local exchange and exchange access marketplace justified removal of the Fifth Report and Order requirements.⁵

The Commission should reaffirm its position and institute a proceeding within three years. The Commission cannot magically anticipate that competition will occur in the local exchange market in any time frame, particularly for independents. ATU argues that the BOCs may be relieved of this requirement prior to independents due to the language adopted in Section 272(f)(1) of the Act. As previously stated by many independent LECs, competition will take longer to occur in independent LECs areas than in BOC areas. The sunset provisions for the BOC have no application to the independent LECs. Independent LECs can go into in-region interexchange service at any time. They do not have to meet the competitive checklist outline in Section 271 of the Act. The checklist gives the BOCs an incentive to fully comply with the requirements of Section 271 before they are allowed to provide in-region interexchange competition.

⁵Second Report and Order at paragraph 196.

Therefore, the sunset provision is more applicable to the BOCs than it would be for the independent LECs, who are under no constraints to enter long distance today.

The Commission further found that it

should not exempt any independent LECs from the Fifth Report and Order requirements based on their size or rural service territory because neither a carrier's size nor the geographic characteristics of its service area will affect its incentives or ability to improperly allocate costs or discriminate against rival interexchange carriers.⁶

III. The Commission Should Not Adopt a Streamlined Waiver Process

ATU argues that the Commission should adopt a streamlined waiver process for independent LECs that face competition. ATU notes that GCI and AT&T/Alascom have reached interconnection agreements with ATU. ATU claims that GCI has begun "offering local exchange service to residents of Anchorage."⁷ In fact, GCI has only been able to begin providing a limited facilities based services to a few ISPs, due to limitations on interoffice trunking, and a few employee test customers on a resale basis. Efforts to achieve interconnection for true loop based competition are frustrated by construction delays and back office/operational support issues.

The current waiver process is adequate to meet the needs of the independent LECs. Due to the workload at the Commission, it will impossible for the Commission to adequately address the

⁶Id. at paragraph 183.

⁷ATU Petition for Reconsideration, page 6.

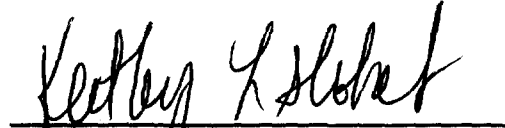
wavier requests on 45 days notice. The Commission will address each waiver petition as it is filed and should be given the opportunity to develop a full and adequate record to make that determination. The Commission invites independent LECs to seek a waiver of these requirements on the basis of "special circumstances."⁸ The Commission correctly notes that a "petitioner will face a heavy burden in demonstrating the need for such a waiver."⁹

Conclusion

The Commission should affirm its Second Report and Order.

Respectfully submitted,

GENERAL COMMUNICATION, INC.



Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW
Suite 900
Washington, D.C. 20005
(202) 842-8847

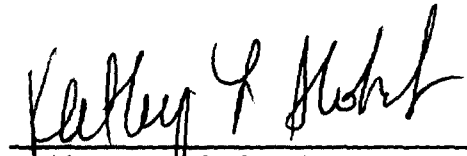
September 8, 1997

⁸Second Report and Order at footnote 518.

⁹Id.

STATEMENT OF VERIFICATION

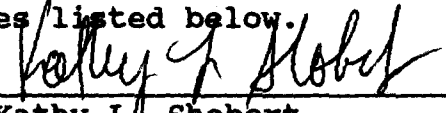
I have read the foregoing, and to the best of my knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed September 8, 1997.

A handwritten signature in cursive script, appearing to read "Kathy L. Shobert", written over a horizontal line.

Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW
Suite 900
Washington, D.C. 20005
(202) 842-8847

CERTIFICATE OF SERVICE

I, Kathy L. Shobert, do hereby certify that on this 8th day of July, 1997 a copy of the foregoing was mailed by first class mail, postage prepaid, to the parties listed below.


Kathy L. Shobert

Paul J. Berman
Alane C. Weixel
Covington & Burling
1201 Pennsylvania Ave., NW
P. O. Box 7566
Washington, DC 20044

David Cosson
NTCA
2626 Pennsylvania Ave., NW
Washington, DC 20037

Gerard J. Duffy
Blooston, Mordkofsky, Jackson & Dickens
2120 L St., NW
Suite 300
Washington, DC 20037

Michael Yourshaw
Wiley, Rein & Feilding
1776 K St., NW
Washington, DC 20006

Glenn S. Rabin
Alltel
655 15th St., NW
Suite 220
Washington, DC 20005

ITS
1919 M St., NW, Suite 246
Washington, DC 20554